

Court No. - 73

Case :- CRIMINAL MISC ANTICIPATORY BAIL
APPLICATION U/S 438 CR.P.C. No. - 12354 of 2023

Applicant :- Sonu@ Salimuddin

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Ajit Kumar

Counsel for Opposite Party :- G.A.,Kamaluddin Khan

Hon'ble Nalin Kumar Srivastava,J.

1. Two supplementary affidavits filed in the matter are taken on record.
2. Heard Sri Ajit Kumar, learned counsel for the applicant, learned A.G.A for the State and Sri Kamaluddin Khan, learned counsel for the informant and perused the record.
3. The minor daughter of the informant was enticed away by some unknown boy, who was persuaded by named accused Shabana and when she was not traced, an F.I.R. was lodged under sections 363, 366, 506 IPC on 24.6.2015 and after investigation, charge-sheet was submitted against accused Pradeep and Shabana and the name of present applicant, which came into the light along with Bashir and Firoz, was exonerated. However, during course of examination, the prosecutrix, who was examined as P.W.2, made a categorical statement before the Court that when co-accused Shabana and Firoz took her to the house of Sonu, cold drink was administered to her and she became unconscious and subsequently in a hotel room, rape was committed with her by Bashir and the present applicant Sonu for few days since 21.6.2015 and some obscene photographs and videos were also prepared. Anyhow she escaped from the clutches of the accused and police recovered her and subsequently by invoking its power under section 319 Cr.P.C., the court concerned summoned the applicant along with co-accused Firoz and Bashir to face trial under Sections 363, 366, 376 (dha ka) IPC read with Section 5/6 POCSO Act vide order dated 8.9.2021.
4. It is submitted by the learned counsel for the applicant that the applicant is innocent and has no concern with the present matter. He has been falsely implicated in this matter. Allegations levelled against the applicant are false. Applicant's case is squarely covered

under Section 438 Cr.P.C. It is further submitted that no specific role has been assigned to the present applicant in the alleged crime. It is further submitted that the applicant is not named in the F.I.R. The minor victim was entangled with co-accused Pradeep and in her statement under sections 161 and 164 Cr.P.C., she has given her statement in the same direction. It is further submitted that the victim has also performed marriage with co-accused Pradeep on 23.6.2015. The prosecution story is totally false as according to the statement of the victim as P.W.2, she was taken to the house of accused Sonu on 21.6.2015 and she was kept there for few days and rape was committed to her, but at the same time, in her marriage agreement with co-accused Pradeep Kumar she has stated that on 23.6.2015, she had performed her marriage with Pradeep Kumar. It is further submitted that the victim has not even named the applicant in her statement u/s 161 Cr.P.C., but in her statement recorded u/s 164 Cr.P.C., she has narrated a twisted story and false allegation has been levelled against the present applicant. It is further submitted that the parties have entered into compromise. It is further submitted that co-accused Bashir Khan has been granted protection by the Hon'ble Apex Court in S.L.P. No. 8044 of 2022 connected with Crl. Appeal No.529 of 2023 vide order dated 20.2.2023. It is further submitted that the medical evidence does not corroborate the prosecution version and the applicant is entitled for anticipatory bail.

5. Per contra, learned A.G.A. as well as learned counsel for the informant vehemently opposed the prayer for anticipatory bail and submitted that on 29.8.2023, non-bailable warrant and process u/s 82 Cr.P.C. has been issued against the applicant by the court concerned and he is a proclaimed offender. It is also submitted that in her statement u/s 164 Cr.P.C. and also in her deposition before the trial court, the victim has made a categorical statement that by consuming something in cold drink to her in a state of unconsciousness, rape was repeatedly committed with her by the present applicant and other co-accused Bashir. It is further submitted that the prosecutrix in this case is a minor girl and it is a case under the POCSO Act. The offence under the POCSO Act is not compoundable and the compromise, which has allegedly been taken place between the parties, has no impact at all. It is also submitted that there is no possibility of false implication of the applicant at this stage. Offence is very serious in nature and the applicant is not entitled for anticipatory bail.

6. In **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has held that

while considering an application for grant of anticipatory bail, the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence including intimidating witnesses, likelihood of fleeing justice, such as leaving the country, etc. It has further been held that Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion.

7. Hence, considering the settled principles of law regarding anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicant and all attending facts and circumstances of the case, without expressing any opinion of the merits of the case, in my view, it is not a fit case for anticipatory bail to the applicant till the end of trial. The prayer made in the application is refused.

8. The anticipatory bail application is **rejected**.

Order Date :- 19.12.2023

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